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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
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Ex parte STEVEN A. SUNSHINE and ERIK J. SEVERIN

_____

Appeal 2008-1565
Application 09/802,354
Technology Center 3600
_____

Decided:[1] February 3, 2009
_____

Before WILLIAM F. PATE III, JENNIFER D. BAHR, and
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

STEVEN D.A. McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

_____

1　　　　　The Appellants appeal under 35 U.S.C. § 134 (2002) from the final

2　　rejection of claims 1-8 and 56 under 35 U.S.C. § 103(a) (2002) as being

3　　unpatentable over Kolawa (US 6,370,513 B1, issued Apr. 9, 2002) and the

4　　Examiner's Official Notice that "receiving feedback/reviews of products

5　　from consumers is well known to those of ordinary skill in the art" (Ans. 4-

6　　5). We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

7　　　　　The claims on appeal relate to a system for recommending consumer

8　　products based upon comparisons of chemical and physical analytical

9　　descriptors of the consumer products, as well as human preferences. (Spec.

10　　3, l. 32 – 4, l. 1.) Claim 1 is the sole independent claim on appeal. In claim

11　　1, the Appellants recite a descriptor module that is configured to receive

12　　human descriptor trait ["HDT"] descriptor input regarding a plurality of

13　　descriptors of at least a sampled consumer product from at least two

14　　independent consumers. A second computing module sorts between each of

15　　a plurality of consumer product to form at least two classes. A third

16　　computing module determines for each of the plurality of consumer products

17　　a correlation between the at least two classes and each of the plurality of

18　　descriptors *including the HDT descriptor input*.

19　　　　　Kolawa discloses an automatic recommendation system for making

20　　recommendations of products. (Kolawa, col. 4, ll. 63-66). The Appellants

21　　contend that Kolawa fails to disclose a third computing module that

22　　determines for each of a plurality of consumer products a correlation

23　　between at least two classes of products and each of a plurality of descriptors

24　　including received HDT descriptor input. (*See* App. Br. 4; Reply Br. 1).

25　　The Examiner finds that Kolawa discloses this third module (Ans. 4) but

26　　provides no citation indicating where Kolawa makes this disclosure.

1 Therefore, the question of whether to sustain the rejection of claims 1-

2 8 and 56 under § 103(a) turns on one issue:

3   Have the Appellants shown that the Examiner erred in

4   determining that Kolawa discloses or suggests a third

5   computing module that determines for each of said plurality of

6   consumer products a correlation between said at least two

7   classes and each of said plurality of descriptors including the

8   received HDT descriptor input?

9 Kolawa's system hosts at least a user preference database and a

10 recommendation database. (Kolawa, col. 5, ll. 48-49). The user preference

11 database stores one or more user preference vectors for each of a plurality of

12 individual users. (*See* Kolawa, col. 5, l. 54-55). The recommendation

13 database stores a product vector for each item which the system might

14 recommend. (Kolawa, col. 6, ll. 36-38). Kolawa discloses that retailers

15 submit the information used to formulate the product vectors. (Kolawa, col.

16 5, ll. 2-6). The user preference vectors and the product vectors comprise

17 inclusive fields having values quantifying attributes of consumer products.

18 (Kolawa, col. 6, ll. 5-8, 16-17, 46-48 and 55-57). Kolawa's system selects

19 products for recommendation by comparing the values of the inclusive fields

20 of a user preference vector with the values of the inclusive fields of product

21 vectors in product categories desired by a user. (Kolawa, col. 9, l. 66 – col.

22 10, l. 3; col. 10, ll. 7-10; col. 10, ll. 36-39 and col. 11, ll. 3-4; *see also*

23 Kolawa, col. 6, ll. 46-63).

24 The Appellant in this appeal bears the burden of showing that the

25 Examiner has failed to identify sufficient evidence of obviousness to support

26 a prima facie case. *In re Kahn*, 441 F.3d 977, 987 (Fed. Cir. 2006).

1 Conversely, "rejections on obviousness grounds cannot be sustained by mere

2 conclusory statements; instead, there must be some articulated reasoning

3 having rational underpinning to support the legal conclusion of

4 obviousness." *Kahn*, 441 F.3d at 988. The role of this Board is appellate.

5 *See* § 6(b). If the Examiner fails to identify where sufficient evidence to

6 support a prima facie case of obviousness may be found, the Board is not

7 obligated to "play archeologist with the record," *see DeSilva v. DiLeonardi*,

8 181 F.3d 865, 867 (7th Cir. 1999) and seek out reasoning having rational

9 underpinning which might support the Examiner's rejection.

10 Although Kolawa discloses receiving feedback from consumers

11 regarding at least a sampled consumer product (including feedback

12 concerning such subjective product traits as saltiness) and using the

13 feedback to adjust the consumers' user preference vectors (*see* Kolawa, col.

14 11, l. 51 – col.12, l. 7), Kolawa's system does not appear to alter the product

15 vectors in response to such feedback. The Examiner provides no citation

16 indicating where Kolawa might disclose determining a correlation between

17 descriptors including the feedback/reviews of products from consumers and

18 at least two classes of products available for recommendation

19 The Appellants' argument asserting that Kolawa fails to disclose or

20 suggest the third computing module is all too brief. Nevertheless, although

21 the Examiner articulates reasoning supporting the conclusion that it would

22 have been obvious to modify Kolawa's system to include a descriptor

23 module as recited in claim 1, the Examiner articulates no reasoning to

24 support the conclusion that one of ordinary skill in the art would have found

25 it obvious to modify Kolawa's system to include the third computing

1 module of independent claim 1 and dependent claims 2-8 and 56. The

2 foregoing analysis implies the conclusion that:

3   The Appellants have shown that the Examiner erred in determining

4 that Kolawa discloses or suggests a third computing module that determines

5 for each of said plurality of consumer products a correlation between said at

6 least two classes and each of said plurality of descriptors including the

7 received HDT descriptor input.

8   Therefore, the Appellants have shown that the Examiner erred in

9 rejecting claims 1-8 and 56 under § 103(a) as being unpatentable over

10 Kolawa.

11

12   DECISION

13   We REVERSE the rejection of claims 1-8 and 56.

14

15   REVERSED

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